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INFO RUCNASE/ASEAN MEMBER COLLECTIVE
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RUEHBY/AMEMBASSY CANBERRA 2457
RUEHNE/AMEMBASSY NEW DELHI 5951
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RUEKJCS/SECDEF WASHDC
RUEKJCS/JOINT STAFF WASHDC

C O N F I D E N T I A L SECTION 01 OF 02 RANGOON 000109

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SUBJECT: BURMA: SUPREME COURT REJECTS AUNG SAN SUU KYI
APPEAL

REF: 2009 RANGOON 676 AND PREVIOUS

Classified By: P/E Chief Jennifer Harhigh for Reasons 1.4 (b) & (d)

Summary

1. (C) Burma's Supreme Court on February 26 rejected the appeal of Aung San Suu Kyi (ASSK) and her two assistants, who were convicted in August 2009 for violating the terms of ASSK's house arrest. As planned, ASSK did not attend the court session. Her legal team, commenting that today's verdict was "not unexpected," is preparing a third and final appeal to Burma's Special Supreme Appeals Court within the next month. One of her lawyers surmised the government may be stretching out ASSK's appeals until they are prepared to release her and demonstrate "rule of law" in the process. End summary.

GOB Appeal Accepted, ASSK Appeal Rejected

2. (C) With the CDA traveling up country, DCM and Pol/Econ Chief, together with colleagues from the British, Australian, German and French Embassies, attended the February 26 session at Burma's colonial-era High Court building in downtown Rangoon. The small gallery was filled with observers, including all of ASSK's lawyers, some NLD members, and other interested parties, but no media. A court official loudly banged a 10 foot-long pole in the cavernous courtroom to call the assembled to order. A single judge entered and pronounced the court's rulings. He first announced that the Supreme Court accepted the GOB's request to delete a statement from the October 2 Divisional Court judgment that the 1974 constitution was invalid, since any discussion of that constitution was "unnecessary" in the ASSK case. The judge then announced that the Supreme Court rejected ASSK's appeal of her conviction.

3. (C) ASSK lawyers Nyan Win and Kyi Win (aka Neville) clarified to us afterwards that the court did not provide a specific reason for dismissing the appeal; the attorneys expect a forthcoming written judgment from the court will offer details. Although the Supreme Court session continued

with other cases, the portion regarding the legal fate of ASSK and her two assistants concluded in fewer than five minutes.

Lawyers to Continue Appeals Process

¶4. (C) Nyan Win said the legal team will immediately begin work on the third and final appeal, noting that ASSK has authorized them to pursue all legal actions possible to secure her freedom. Although the lawyers are permitted up to six months to file the final appeal to the "Special Supreme Appeals Court," Nyan Win told us he expects they will do so within two-three weeks. According to the lawyers, the next appeal will require a two-stage process in which two Supreme Court judges would hear the case in Rangoon and decide whether to admit it; a panel of three Supreme Court judges, including either Burma's Chief Justice or his deputy, will consider the case in Nay Pyi Taw if it is accepted. Nyan Win could not say whether the lawyers will pursue the same legal strategy for the final appeal, indicating the legal team will need to rethink its approach.

Verdict "Not Unexpected"

¶5. (C) Neville commented to us that the verdict was "not unexpected" and assessed that the GOB is extending the appeals process as long as possible, perhaps until they are prepared to release ASSK. At that point, authorities could

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arrange for the granting of her appeal, setting her free and claiming the "independent legal process" had run its course. (Note: ASSK's lawyers believe her 18-month sentence will expire in November 2010, taking into account time spent in detention during her trial.)

¶6. (C) We agree that the Supreme Court decision is no surprise. Despite courtroom theatrics, the judges are merely carrying out the regime's orders. We note Nyan Win was told that all Supreme Court officials were in Nay Pyi Taw on February 24, two days before the verdict. It's certainly possible they were given their marching orders at that time.
DINGER